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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 10/29/2007
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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10/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/853,428

Applicant(s)

BRAINARD, GEORGE

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 11-15, 17 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6, 15, 17, 20 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 11-14, 21, 22 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Formal Matters

This application has been revived effective 9/20/2007. The examiner has reconsidered the arguments presented 11/10/2003 regarding the wavelength range of 435-488 nm (this range relates to the top 25% sensitivity range for human melatonin suppression as illustrated in Figure 11) and now accepts this range for examination. Claims 1-3, 5, 6, 11-15, 17 and 20-27 are currently pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 5, 11, 12, 13, 14, 21, 22 and 27 are drawn to a method of treating or preventing a light responsive disorder, classified in class 607, subclass 88.
- II. Claims 3, 6, 15, 17, 20, 23, 24-26 are, drawn to a method of minimizing, circadian and neuro-endocrine stimulation, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related treatment methods, however, the related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant

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case, the inventions as claimed are not capable of use together because the claims of invention I transmit a wavelength range of 435-488 nm, while the claims of invention II excludes or blocks wavelengths 435-488 nm. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Patricia Wenger on 10/3/2007 a provisional election was made with traverse to prosecute the invention of Group I, claims 1, 2, 5, 11, 12, 13, 14, 21, 22 and 27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 6, 15, 17, 20, 23, 24-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

Claims 1, 5, 11 and 13 disclose a "peak sensitivity" of emitted wavelengths from the light source. The examiner assumes this should be a "peak intensity" of emitted wavelengths from the light source.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 11, 12, 13, 14, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerdt (6,235,046).

Regarding claims 1, 2 and 5, Gerdt discloses a method of treating or preventing a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system emits (light entering the eye) a balance of wavelengths to stimulate a circadian system of the mammal, said balance of wavelengths having a peak intensity ranging from about 425-445 nm (which falls within the range of 435-488 nm); wherein said light responsive disorder is seasonal affective disorder (SAD) and col. 1, lines 9-43, col. 4, lines 4-49, col. 8, line 54-col. 9, line 35.

Further to claims 11-14 and 21-22, Gerdt discloses a transparent or translucent composition (depending upon the thickness of the layers) comprising at least one light filtering component, namely a filter that transmits at a peak of 435 nm with a 10 nm band-pass (which falls within the range of 435-488 nm) and blocks all other wavelengths and col. 9, lines 22-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hegyi (5,235,178). Hegyi discloses a light sensor with diffuser whereby the electrical output signal is representative of a response characteristic applied to the input light which corresponds to that of a human eye or is equivalent to a light meter system comprising a light metering device configured to match wavelength sensitivity of the human eye (wavelength range at half maximum of about 520-605 nm) and col. 4, line 1-col. 5, line 20). The peak sensitivity wavelength range of 425-505 nm can be readily be obtained as required by an appropriate filter with that transmission range as is well known in the art of band-pass filters.

Note also that any typical commercial light or exposure meter can be readily modified for peak sensitivity in the wavelength range of 425-50 nm by an appropriate filter with that transmission range as is well known in the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lewy et al. (6,069,164) disclose methods for treating circadian rhythm phase disturbances including the use of goggles or sunglasses capable of

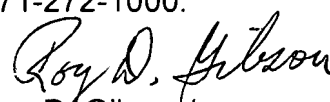
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filtering blue and green wavelengths (450-575 nm) which are the most active in suppressing melatonin production: col. 27, lines 40-53).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/Roy D. Gibson/
Primary Examiner
Art Unit 3739

October 24, 2007